

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

June 17, 2002

IN RE:

**GENERIC DOCKET TO ESTABLISH
GENERALLY AVAILABLE TERMS AND
CONDITIONS FOR INTERCONNECTION**

**DOCKET NO.
01-00526**

**ORDER DIRECTING BELL SOUTH TO FILE A SECOND AMENDED MODIFIED
INTERCONNECTION AGREEMENT AND DIRECTING THE PRE-HEARING
OFFICER TO SCHEDULE AND CONDUCT WORKSHOPS**

This matter came before the Tennessee Regulatory Authority (the "Authority" or "TRA") at the regularly scheduled Authority Conference held on April 30, 2002 for consideration of the Report and Recommendation (the "Report") issued by the Pre-Hearing Officer on March 15, 2002.

The Report

In the Report, the Hearing Officer recommended that the Authority (1) order BellSouth to file a Second Amended Modified Interconnection Agreement that incorporates the recommendations contained in Attachment One of the Report within fifteen (15) days of the Authority's deliberations on the Report, (2) proceed, through the Pre-Hearing Officer, with the preparation of this docket for a hearing on the issues listed in Attachment Two of the Report, simultaneously with the interim interconnection agreement approval process, and (3) permit the parties to participate in workshops upon conclusion of the hearing and the filing and approval of any necessary modifications to the interim interconnection agreement.

As noted in the Report, on August 23, 2001, ITC^DeltaCom, Inc. filed comments urging the Authority to conduct a series of workshops followed by a hearing to resolve any remaining

issues. In comments filed on August 31, 2002, Time Warner Telecom of the Mid-South, L.P. supported the workshop process. With regard to the workshop proposal, the Hearing Officer stated:

The use of workshops alone, however, will not achieve the goals of this Docket. Before the parties may effectively engage in workshops, the Authority must render rulings on any issues that involve legal and/or public policy determinations. Only after the Authority has conclusively resolved such issues would it be reasonable for the parties to participate in workshops to resolve any remaining disputes.

To explain, it is inconsistent with the goals of this Docket to allow the parties to resolve issues involving legal and/or public policy disputes by agreement. If such were permitted, there would be no streamlining of the interconnection process, because in the future a CLEC [competing local exchange carrier] or ILEC [incumbent local exchange carrier] that disagrees with a workshop decision may insist on bringing the issue to the Authority for arbitration. Were the Authority to have stated its position on a particular issue after a hearing, the CLEC or ILEC would be less likely to bring the issue before the Authority for arbitration, absent a change in law or policy, because the Authority had already ruled on the issue. The latter will streamline the process; the former will not.¹

Comments of BellSouth Telecommunications, Inc. Filed on April 1, 2002

In comments filed on April 1, 2002, BellSouth Telecommunications, Inc. ("BellSouth") stated that the Hearing Officer's recommendation that the Authority proceed with a hearing on the sixteen (16) issues listed in Attachment Two should be modified on the basis that "the rationale set forth in the Report for requiring formal hearings prior to workshops is flawed."²

BellSouth states:

Contrary to the assertion that "it is inconsistent with the goals of this Docket to allow the parties to resolve issues involving legal and/or public policy disputes by agreement," the Federal Act encourages negotiations as the first and best means of resolving disputes among the parties to interconnection agreements.³

Citing Section 252 of the Federal Telecommunications Act of 1996 (47 U.S.C. § 252),

¹ *Report and Recommendation*, Docket No. 01-00526, March 15, 2002, p. 6.

² *Comments of BellSouth Telecommunications, Inc.*, Docket No. 01-00526, April 1, 2002, p. 8.

³ *Id.*

BellSouth states that the "Report turns on its head the Act's requirement that negotiations precede hearings by suggesting that workshop negotiations should only take place after rulings are made."⁴ BellSouth further cites the Authority's rules providing for alternative dispute resolution, Authority Rule Chapter 1220-1-3, stating that mediations held pursuant to these rules "were properly conducted before formal arbitration hearings, not after the hearings."⁵ BellSouth also states:

As the Authority has properly recognized on numerous occasions by approving negotiated interconnection agreements, the parties are free to negotiate the resolution of issues, including "legal and/or public policy disputes," by mutual agreement. There has never been any requirement by the Authority for the parties to forebear from negotiating "issues involving legal and/or public policy disputes" in order that the Authority rule before the parties could reach an agreement. Any such requirement would be inconsistent with the Federal Act's negotiations and arbitration process.⁶

In addition, BellSouth states:

The assertions in the Report also appear to reflect a misunderstanding of the nature of workshops. The Report refers to workshop "decisions." Workshops are designed to promote the exchange of information, narrow the issues, and resolve such issues as can be resolved by agreement. No decision would result from the workshops other than decisions by the parties to resolve issues by agreement.⁷

Comments of XO Communications, Inc. Filed on April 2, 2002

XO Communications, Inc. ("XO") filed comments on the Report on April 2, 2002. XO states that it "fully supports the Hearing Officer's recommended modifications to the draft interconnection agreement" filed by BellSouth, and XO supports the decision to set a hearing to address unresolved issues.⁸ XO further states: "XO suggests, however, that such a hearing will be more productive if the parties meet in a workshop-style proceeding prior to the hearing."⁹ In

⁴ *Id.*, p. 9.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*, p. 10.

⁸ *Comments of XO Communications, Inc.*, Docket No. 01-00526, April 2, 2002, p. 1.

⁹ *Id.*

support of this statement, XO states, first, that the “parties may be able to resolve some issues and make a joint recommendation to the Authority.”¹⁰ XO adds that the Authority “would retain the right to determine whether or not that recommendation is consistent with state and federal law and the public interest.”¹¹ Second, XO states, “[a] pre-hearing workshop will likely result in adding additional issues to the list and better refining existing issues.”¹² XO further states that “a pre-hearing workshop will help educate both the parties and the TRA staff about the proposed hearing issues.”¹³

Consideration of the Report and Recommendation at the April 30, 2002 Authority Conference

At the April 30, 2002 Authority Conference, the Directors of the Authority voted unanimously to order BellSouth, consistent with the recommendation of the Pre-Hearing Officer, to file a Second Amended Modified Interconnection Agreement that incorporates the recommendations contained in Attachment One of the Report within fifteen (15) days. In addition, the Directors voted unanimously that the Pre-Hearing Officer shall schedule and conduct pre-hearing workshops.

A majority of the Directors voted that the pre-hearing workshops should be conducted with parameters consistent with the reasons for which this docket was opened and the workshops should not undo decisions that the Authority has previously made, with the exception that the parties should be allowed to present new legal authority that has become available since the entry of any decisions.¹⁴ The majority further determined that the parties should not be allowed to

¹⁰ *Id.*

¹¹ *Id.*, pp. 1-2.

¹² *Id.*, p. 2.

¹³ *Id.*, pp. 2-3.

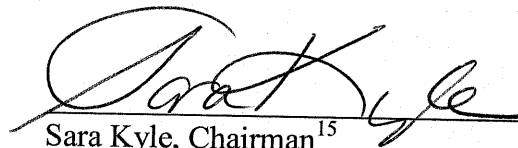
¹⁴ Chairman Kyle did not vote with the majority as to the scope of the pre-hearing workshops. Chairman Kyle stated that pre-hearing workshops should be held but should not be restricted as stated in the prevailing motion. Instead, Chairman Kyle stated that the parties should be allowed to discuss “any issues” during the pre-hearing workshops. Transcript of Authority Conference, April 30, 2002, p. 33.

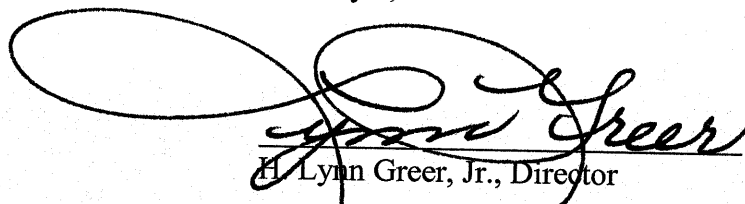
submit language that alters in any respect a decision made by the Authority. The majority determined that should a majority of the parties reach an agreement as to an issue arising out of the workshops or agree to remove an issue that is currently listed in Attachment Two to the Report, the parties shall inform the Authority of such agreement and of any differing views, particularly any dissenting views or minority opinions. The majority of Directors directed the Pre-Hearing Officer to take extra measures to ensure that the competing local exchange carrier community in Tennessee receives notice of and has an opportunity to participate in the workshops. Finally, the majority directed the Pre-Hearing Officer, at a time following the workshops to be determined by the Pre-Hearing Officer, to formulate an issues list for a hearing and otherwise move this docket forward.

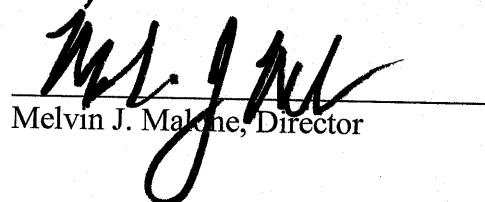
IT IS THEREFORE ORDERED THAT:

1. Within fifteen (15) days, BellSouth Telecommunications, Inc. shall file a Second Amended Modified Interconnection Agreement that incorporates the recommendations contained in Attachment One of the Pre-Hearing Officer's March 15, 2002 Report and Recommendation.
2. The Pre-Hearing Officer shall schedule and conduct pre-hearing workshops in accordance with the directions set forth in this Order.
3. Upon completion of the pre-hearing workshops, the Pre-Hearing Officer shall

formulate an issues list for a hearing and take the necessary actions to move this docket to completion.


Sara Kyle, Chairman¹⁵


H. Lynn Greer, Jr., Director


Melvin J. Malone, Director

ATTEST:


K. David Waddell, Executive Secretary

¹⁵ Chairman Kyle did not vote with the majority on all issues. See note 14.